

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In Re:) CASE NO. 11-03877-JW
)
Bamberg County Memorial Hospital) CHAPTER 9
)
Debtor.) **NOTICE OF MOTION FOR RELIEF**
) **FROM AUTOMATIC STAY (11 U.S.C.**
) **§ 362(a))**

TO: DEBTOR, DEBTOR'S COUNSEL, 20 LARGEST UNSECURED CREDITORS, AND US TRUSTEE'S OFFICE

PLEASE TAKE NOTICE THAT a hearing will be held on the attached motion on:

Date: August 18, 2011

Time: 1:30 p.m.

Place: J. Bratton Davis United States Bankruptcy Courthouse, 1100 Laurel Street, Columbia SC 29201-2423.

Within fourteen (14) days after service of the attached Motion, the Notice of Motion, the Movant's Certification of Facts, any party objecting to the relief sought shall:

1. File with the Court a written objection to the 11 U.S.C. § 362 Motion;
2. File with the Court a Certification of Facts;
3. Serve on the Movant items 1 and 2 above at the address shown below; and
4. File a certificate of such service with the Court.

If you fail to comply with this procedure, you may be denied the opportunity to appear and be heard on this proceeding before the Court.

DATE OF SERVICE : July 6, 2011

MOVANT: Bamberg Healthcare Properties, Inc., UniHealth Post-Acute Care of Bamberg, LLC, and United Pharmacy Services, Inc. d/b/a United Pharmacy Services of Lexington

ATTORNEY/ADDRESS:

By: /s/ 
George B. Caughen, Fed. Id. No. 81

Email: george.cauthen@nelsonmullins.com
Nelson Mullins Riley & Scarborough, LLP
PO Box 11070
Columbia, SC 29211
Tel: (803) 799-2000

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In Re:) CASE NO. 11-03877-JW
)
Bamberg County Memorial Hospital) CHAPTER 9
)
Debtor.) **CERTIFICATION OF FACTS**
)
)
)

In the above-entitled proceeding, in which relief is sought by Bamberg Healthcare Properties, Inc., UniHealth Post-Acute Care of Bamberg, LLC, and United Pharmacy Services, Inc. d/b/a United Pharmacy Services of Lexington from the automatic stay provided by 11 U.S.C. § 362, I do hereby certify to the best of my knowledge, the following:

1. Nature of Movant's Interest:

- *Provider Pharmacy Agreement* between United Pharmacy Services, Inc. d/b/a United Pharmacy Services of Lexington and Bamberg County Nursing Center
- *Asset Purchase Agreement* between Bamberg Healthcare Properties, Inc. and UniHealth Post-Acute Care of Bamberg, LLC and Bamberg County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina
- *Food Services Agreement* with UniHealth Post-Acute Care of Bamberg, LLC and Bamberg County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina

2. Brief Description of Security Agreement, copy attached (if applicable):

Not Applicable

3. Description of Property Encumbered by Stay (include serial number, lot and block, etc.):

Not Applicable (property is not encumbered by automatic stay). Movant is erroneously listed as a creditor by the Debtor.

4. Basis for Relief (property not necessary for reorganization, debtor has no equity, property not property of estate, etc.; include applicable subsection of § 362):

- a. Pursuant to 11 U.S.C. §§ 362(a) and 541(a), the proper party to Movant's contracts is the County of Bamberg, South Carolina, not the Debtor; therefore, the contracts are not property of the Debtor's estate, and no automatic stay is in effect as to the contracts.

5. Prior Adjudication by Other Courts, copy attached (Decree of Foreclosure, Order for Possession, Levy of Execution, etc., if applicable):

Not Applicable

6. Value of Property, copy of Valuation attached:

Fair Market Value: N/A

Liens (Mortgages) N/A

Net Equity N/A

Source/Basis of Value N/A

7. Amount of debtor's estimated equity (using figures from paragraph 6, supra):

Not Applicable

8. Month and Year in Which First Direct Post-Petition Payment Came Due to Movant (if applicable).

The Debtor is not a party to the contracts.

9. (a) For Movant/Lien Holder: List or attach a list of all post-petition payments received directly from debtor(s), clearly showing date received, amount, and month and year for which each such payment was applied. Not Applicable

- (b) For objecting Party (if applicable): List or attach a list of all post-petition payments included in the Movant's list from (a) above which objecting party disputes as having been made. Attach written proof of such payment(s) or a statement as to why such proof is not available at the time of filing this objection. Not Applicable

10. Month and Year for Which Post-petition Account of the Debtor(s) is Due as of the Date of this Motion:

The Debtor is not a party to the contracts.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: /s/ G. B. Cauthen
George B. Cauthen, Fed. Id. No. 81

Email: george.cauthen@nelsonmullins.com
Nelson Mullins Riley & Scarborough, LLP
PO Box 11070
Columbia, SC 29211
Tel: (803) 799-2000

**ATTORNEYS FOR BAMBERG HEALTHCARE
PROPERTIES, INC., UNIHEALTH POST-ACUTE
CARE OF BAMBERG, LLC, AND UNITED
PHARMACY SERVICES, INC. D/B/A UNITED
PHARMACY SERVICES OF LEXINGTON**

Columbia, South Carolina
July 6, 2011

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In Re:)	CASE NO. 11-03877-JW
)	
Bamberg County Memorial Hospital)	CHAPTER 9
)	
Debtor.)	
)	
)	

**MOTION OF BAMBERG HEALTHCARE PROPERTIES, INC., UNIHEALTH POST-
ACUTE CARE OF BAMBERG, LLC, AND UNITED PHARMACY SERVICES, INC.
D/B/A UNITED PHARMACY SERVICES OF LEXINGTON FOR RELIEF FROM STAY**

PLEASE TAKE NOTICE THAT the undersigned, on behalf of Bamberg Healthcare Properties, Inc., UniHealth Post-Acute Care of Bamberg, LLC, and United Pharmacy Services, Inc. d/b/a United Pharmacy Services of Lexington ("Contracting Parties"), hereby files their Motion for Relief from Stay (the "Motion") pursuant to 11 U.S.C. § 362(d)¹, Bankruptcy Rules 4001(a) and 9014, and Local Bankruptcy Rule 4001-1. This is a core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(A) and (G) and Local Civil Rule 83.IX.01, D.S.C. The memorandum of law is incorporated herein. In support of their Motion, the Contracting Parties state the following:

STATEMENT OF FACTS

1. On or about December 3, 2008, Bamberg County Nursing Center entered into a *Provider Pharmacy Agreement* with United Pharmacy Services, Inc. d/b/a United Pharmacy Services of Lexington for various pharmacy-related services.

2. On or about January 14, 2009, Bamberg County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina ("Bamberg County") entered

¹ Further references to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., will be by section number only.

into an *Asset Purchase Agreement* with Bamberg Healthcare Properties, Inc. and UniHealth Post-Acute Care of Bamberg, LLC for the sale of various assets and the assumption of certain obligations as more specifically set forth in the *Asset Purchase Agreement*, for goods and/or services provided to the Debtor on or after the closing of the asset sale to Bamberg Healthcare Properties, Inc. and UniHealth Post-Acute Care of Bamberg, LLC as more fully described in the *Asset Purchase Agreement*.

3. On or about August 3, 2009, Bamberg County, South Carolina entered into a *Food Services Agreement* with UniHealth Post-Acute Care of Bamberg, LLC to have meals prepared and delivered by UniHealth Post-Acute Care of Bamberg, LLC to Debtor.

4. The *Provider Pharmacy Agreement*, *Asset Purchase Agreement*, and *Food Services Agreement* (collectively, the "Contracts") referenced hereinabove are all obligations of Bamberg County, South Carolina, and are not obligations of the Debtor.

5. On or about June 20, 2011 the Debtor filed for relief pursuant to Chapter 9 of the United States Bankruptcy Code. However, Bamberg County, South Carolina has not filed for bankruptcy relief and is not a debtor in this bankruptcy.

6. In the Debtor's *List of Creditors Holding 20 Largest Unsecured Claims* [Dkt. No. 5, filed June 20, 2011], the Debtor included United Pharmacy Services, Inc. *d/b/a* United Pharmacy Services of Lexington² and UniHealth Post-Acute Care of Bamberg, LLC³ as unsecured creditors, apparently pursuant to the *Provider Pharmacy Agreement* and the *Food Services Agreement*. The debt associated with the *Asset Purchase Agreement* was not included in the *List of Creditors Holding 20 Largest Unsecured Claims*.

² United Pharmacy Services, Inc. *d/b/a* United Pharmacy Services of Lexington is listed as "UPS Lexington, Inc." and the amount of the claim is listed as \$92,260

³ UniHealth Post-Acute Care of Bamberg, LLC is listed as "Unihealth P.A.C. of Bamberg" and the amount of the claim is listed as \$46,640.

ARGUMENT

The automatic stay only protects "property of the debtor" and "property of the estate." 11 U.S.C. §362(a). Section 541(a) states that property of the estate includes "all legal or equitable interests *of the debtor* as of the commencement of the case." 11 U.S.C. §541(a)(1) (emphasis added). However, "the automatic stay does not stay actions against property that is not property of the estate." In re Brittain, Ch. 13 C/A No. 10-01515-jw, (Bankr. D.S.C. Aug 16, 2010) citing In re Moore, 410 B.R. 439, 441 (Bankr. E.D. Va. 2009).

The Contracts are not property of the bankruptcy estate. As previously mentioned, the Contracts are all obligations of Bamberg County, South Carolina (which is not a debtor in this action and has also not filed for bankruptcy protection) and are not obligations of the Debtor. Upon information and belief, Debtor's counsel agrees that the Contracts are not property of the bankruptcy estate, but has not yet amended the *List of Creditors Holding 20 Largest Unsecured Claims* to remove these purported unsecured claims. Therefore, as the Contracts are not included in the Debtor's estate, under Section 362(a), the Contracts would not be protected by the automatic stay. Accordingly, relief from the automatic stay should be granted.

WHEREFORE, the Contracting Parties request that the Court enter its order granting the Contracting Parties relief from the automatic stay as to the Contracts, and grant such other and further relief as this Court deems as just and appropriate.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 

George B. Cauthen, Fed. Id. No. 81

Email: george.cauthen@nelsonmullins.com

Nelson Mullins Riley & Scarborough, LLP

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Columbia, SC 29211

Tel: (803) 799-2000

**ATTORNEYS FOR BAMBERG HEALTHCARE
PROPERTIES, INC., UNIHEALTH POST-ACUTE
CARE OF BAMBERG, LLC, AND UNITED
PHARMACY SERVICES, INC. D/B/A UNITED
PHARMACY SERVICES OF LEXINGTON**

Columbia, South Carolina
July 6, 2011

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In Re:)	CASE NO.: 11-03877-JW
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Bamberg County Memorial Hospital)	CHAPTER 9
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Debtor.)	
_____)	

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Bamberg HealthCare Properties, Inc., Unihealth Post-Acute Care of Bamberg, LLC and United Pharmacy Services, Inc. dba United Pharmacy Services of Lexington, do hereby certify that I have served all counsel and/or parties in this action with a copy of the pleading(s) hereinbelow specified via U.S. Mail, postage prepaid, to the following addresses:

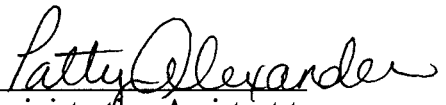
PLEADINGS: Notice of Motion for Relief from Automatic Stay
 Certification of Facts
 Motion for Relief from Stay

SERVED: Bamberg County Memorial Hospital
 509 North Street
 Bamberg, SC 29003

Stanley H. McGuffin, Esq.
PO Box 11889
Columbia, SC 29211-1889

Joseph F. Buzhardt, III
US Trustee
1835 Assembly St, Suite 953
Columbia, SC 29201

20 Largest Unsecured Creditors
SEE ATTACHED

/s/ Patty Alexander 
Patty Alexander, Administrative Assistant to
George B. Cauthen, Fed ID #7574
B. Keith Poston, Fed ID #10599
Nelson Mullins Riley & Scarborough, LLP
PO Box 11070
Columbia, SC 29211

July 6, 2011



**SC Dept of Reveue
PO Box 125
Columbia, SC 29214**

**Palmetto Health Alliance
ATTN: David Lee
190 Parkridge Dr
Columbia, SC 29212**

**Owens & Minor Inc.
VHA Supply Company
PO Box 601157
Charlotte, NC 28260-1157**

**W.L. Gore & Associates
Medical Products Div.
PO Box 751331
Charlotte, NC**

**C.R. Bard, Inc. Peripheral
PO Box 75767
Charlotte, NC 28275-0767**

**UPS Lexington, Inc.
377 North Pond St.
Toccoa, GA 30577-1920**

**SC Dept of Health & Human
Services
1813 Main St, K-116
Columbia, SC 29201**

**Palmetto Health Richland
PO Box 405476
Atlanta, GA 30384-5476**

**Bamberg Emergency Group
PO Box 82368
Lafayette, LA 70598-2368**

**Cook Medical Inc.
22988 Network Place
Chicago, IL 60673-1229**

**Beckman Coulter Inc.
Dept. CH10164
Palatine, IL 60055-0001**

**Professional Pathology Servs
PO Box 865
Columbia, SC 29202-0865**

**CPSI
PO Box 850309
Mobile, AL 36685-0309**

**UniHealth P.A.C. of Bamberg
1626 Jeurgens Court
Norcross, GA 30093-2219**

**SC MFG Ext Partner
817 Calhoun St
Columbia, SC 29201-2305**

**Cardinal Health Medical
Products
PO Box 905867
Charlotte, NC 29290-5867**

**State of South Carolina
1201 Main Street, Suite 500
Columbia, SC 29201-3233**

**Medrad
PO Box 360172
Pittsburgh, PA 15251-6172**

**Medline Industries, Inc.
Dept CH 14400
Palatine, IL 60055-4400**

**Kendall HealthCare Products
PO Box 120823
Dallas, TX 7531-0823**

**Bamberg County Memorial
Hospital
509 North Street
Bamberg, SC 29003**

**Stanley H. McGuffin, Esq.
PO Box 11889
Columbia, SC 29211-1889**

**Joseph F. Buzhardt, III
US Trustee
1835 Assembly St, Suite 953
Columbia, SC 29201**